Interview and CV Jet Tigchelaar for the special issue of the Family Law Review of Argentina

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1. Do you think that the distinction between care and unpaid care work is key to regulating the right to care?

   Interesting question! The notion of unpaid (or informal) care work has value because it expresses the economic value of care. It highlights the right to necessary conditions of time, money, services and legal protection, which are highly relevant in relation to non-discriminatory, fair working conditions and for a modern social security system. However, at Dutch and European level, care is not considered (unpaid) work as such, but as a responsibility that all employees can have, which should be taken into account by the employer. This is a valuable shift from a private and gendered risk to a social and economic right to reconcile private/ family life and professional life, which should promote equal sharing of caregiving between men and women.
   Do you allow me to give some more side notes (as we have done in the Advisory Opinion of UCERF)? Firstly, narrowing care down to unpaid care *work*, could overlook available compensation measures for care giving in other areas of law. Just think of financial compensation measures in tax law, inheritance law, pension law, family law and even private law. Secondly, care has a inherent moral value, which could be relevant for e.g. un*der*paid caregivers, like domestic workers. Furthermore the focus on unpaid care work could loose sight of the right to receive care and the right to self-care. Those other dimensions are of utmost importance for e.g. older people and persons with disabilities For care receivers and self-care, other elements become important, like accessibility, affordability, acceptability and quality of health facilities, and even the right to refuse care. The European Care Strategy aims to improve the situation for both care receivers and people caring for them, professionally or informally.

2. What legal rights should be granted to persons who offer unpaid care work?

   As said before: compensation rights for unpaid care can be found in family law, inheritance law, social security law etc. Examples can be found in our Advisory opinion. Considering protection rights in the area of labour: the first – bottom line - right to be granted is a strong prohibition of direct sex discrimination, which should include 'any less favourable treatment of a woman related to pregnancy or maternity leave'. This should be supplemented with a prohibition of indirect sex discrimination. This concept requires an objective justification where an apparently neutral provision or practice, would disadvantage persons of one sex. Indirect sex discrimination can apply to numerous situations related to care, such as unfavourable treatment due to the taking of parental leave, or flexibility requirements of the employer, or working hours that impede care responsibilities.
   Furthermore, the following facilitating rights are relevant in the light of a better 'work-life balance', for both women and men: rights to suitable leave for carers (including emergency leave, short term leave, long term leaves and parental leave), flexible working arrangements for care purposes and access to 'care services', together with protection provisions in case an employee uses or applies for these rights. These are implemented in the EU Work-Life Balance Directive (2019).

However, for the effectiveness of these rights, attention should be paid to issues like the coherency of leave rights, the (level of) payment of leaves, the scope of persons who can claim the right to leave (to give care to family or household members or also neighbours or friends), that part-time working arrangements could be a hinderance for further reduction of the gender gap in terms of employment, income and social security.

CV Jet Tigchelaar

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Her PHD Thesis (1999) “Who cares?”, was about care and autonomy in the politico-legal debate on alimony. She was member of the Editorial Board of the Journal “Nemesis” on women and law between 1994 and 2003. She has written on a wide range of topics, like the aims of family law, the role of state regarding relational law, child poverty, civil registration of (non binary) sex/gender, male and female circumcision, didactics of professional ethics and identity fraud. She teaches law and (professional) ethics.